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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,331	12/12/2001	Michael T. Milbocker	PRAXIS-5	9980
7590 04/20/2007 PROMETHEAN SURGICAL DYNAMICS LLC 3 GILL ST. SUITE G WOBURN, MA 01810			EXAMINER FUBARA, BLESSING M	
			ART UNIT	PAPER NUMBER
			1618	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/20/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/020,331	MILBOCKER, MICHAEL T.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Blessing M. Fubara	1618	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 January 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,5-14,17-30,40-42 and 44-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-14,17-30,40-42 and 44-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Examiner acknowledges receipt of amendment after final and remarks filed 01/05/2007. The finality of the last office action is withdrawn in light of the amendment to the claims removing the new matter from the claims. Claims 1-3, 5-14, 17-30, 40-42 and 44-52 are pending

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Muller et al. (US 5,624,972).

Muller discloses polymeric compositions comprising isocyanate-terminated polymers and a polyisocyanate composition (column 3, lines 8-16) and the composition comprises at least two polyisocyanate compositions, one is low in NCO polyisocyanate and the other is high NCO polyisocyanate (abstract). Toluene diisocyanate (claim 6) and isophorone diisocyanate (column 6, line 45) are examples of polyisocyanates. The functionality of the polyisocyanate terminated polyol is between 2 and 8 with an excess of isocyanate composition (column 3, lines 8-16).

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Additionally, Muller discloses that the composition comprises at least one other free polyisocyanate composition (See column 6, lines 38-62). These polymeric compositions contain PO/EO units; in the random copolymer, the oxyethylene content is from 10-80% and 2-30% for block copolymers (column 4, line 67 to column 5 line 5; column 7, line 64 to column 8 line 25); 80/20 EO/PO and 25/75 PO/EO are also used (column 9, lines 46, 47). Muller discloses a range of PO: EO polymers. For example, random copolymer having the oxyethylene content of from 10-80% and 2-30% for block copolymers (column 4, line 67 to column 5 line 5; column 7, line 64 to column 8 line 25) is disclosed; also, 80/20 EO/PO and 25/75 PO/EO are also used as disclosed in column 9, lines 46, 47. Muller meets the limitations of claims 1-3 and 8.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4-7, 9-14, 17-30 and 40-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muller et al. (US 5,624,972).

Muller provides polymeric compositions comprising isocyanate-terminated polymers and a polyisocyanate composition as is discussed above. Future intended use carries no patentable weight in a composition claim; and if the instant composition is applicable as a tissue adhesive, the composition of Muller should also be applicable as a tissue adhesive since Muller discloses

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polyol and polyisocyanate. Specifically, the random copolymer having 10-80% EO content (column 4, line 67 to column 5 line 1) suggests a PO content of about 20-90%. Thus while Muller does not specifically disclose the percent propylene oxide recited in claim 4, there is a suggestion for a broader range of 20-80% that overlaps the 10% at the lower end and encloses the 30% at the upper end. Muller suggests PO:EO copolymer that has a ratio of from 20-80% in the PO. There is thus a suggestion for the range recited in claim 4 and the declaration of has not taken into account all the combinations of PO:EO disclosed in the Muller reference, and it could also be said that the ranges used in the declaration filed 2/23/06 also read on the ranges disclosed by the Muller reference.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the teachings of Muller to device compositions comprising one or more polyols terminated with a polyisocyanate and free polyisocyanate. One having ordinary skill in the art would have been motivated to use the desired amounts of PO and EO as suggested by Muller that would be expected to result in a flexible polyisocyanate polymeric composition/adhesive having the inherent properties of the adhesive.

No argument was presented in the response filed 01/05/07.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is (571) 272-0594. The examiner can normally be reached on 7 a.m. to 5:30 p.m. (Monday to Thursday).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Blessing Fubara  
Patent Examiner  
Tech. Center 1600

